

REMARKS

Status of Claims

Claims 1-23 are pending and under consideration.

Restriction Requirement under 35 U.S.C. §§ 121 and 372

The Office requires restriction under 35 U.S.C. §§ 121 and 372 between three groups of claims:

- Group I - Claims 1-17 and 22, drawn to a method of analyzing a biological sample in connection with acute cardiovascular disease; classified in class 435, subclass 7.21, for example. (A 1st method employing a special technical feature).
- Group II - Claims 18-19, drawn to kits comprising reagents for analyzing cardiovascular diseases; classified in class 422, subclass 61, for example. (A 1st product comprising a special technical feature).
- Group III - Claims 20-21 and 23, drawn to therapeutic methods monitoring acute cardiovascular diseases; classified in class 424, subclass 9.1, for example. (A 2nd method employing the special technical feature).

According to the Office, the inventions listed as Groups I-III are not so linked as to form a single general inventive concept under PCT Rule 13.1 because they lack a technical relationship involving a special technical feature, as required by PCT Rule 13.2. Office Action, pages 2-3. Specifically, the Office alleges that the technical feature that links the inventions of Groups I-III is the utility of biomarkers like sCD40L and CRP in acute cardiovascular diseases, and that this technical feature is disclosed in Novo et al. (Stroke, Vol.36, No.3, March 2005, pages 673-675). The Office concluded that this technical feature does not link the inventions of Groups I-III so as to form a single general inventive concept because the technical feature is not a contribution over the prior art. Office Action, page 2.

Applicants respectfully disagree and traverse the restriction requirement for the following reasons. The instant application was filed as a PCT international application on November 10, 2003. Furthermore, the application claims the benefit of priority of German Application No. 10253525.6, filed November 16, 2002, and German Application No. 10316059.0, filed April 8, 2003. The Novo et al. article was published in March 2005, more than one year after the PCT filing date of the instant application. Thus, the Novo et al. article is not prior art for the instant application. For this reason alone, the Office's restriction requirement is flawed. Because Novo et al. is not prior art, it cannot be used to argue that the special technical feature linking the inventions of Groups I-III does not provide a contribution over the prior art.

Accordingly, Applicants request that this restriction requirement be reconsidered and withdrawn. In order to be fully responsive, however, Applicants elect Group I (i.e. claims 1-17 and 22) for further consideration in case the restriction requirement is maintained.

Conclusion

In view of the foregoing remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims. If the Examiner believes a telephone conference would be useful in resolving any outstanding issues, the Examiner is invited to call the undersigned at (202) 408-4316.


Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 13, 2009

By: _____



Marcus D. Kretzschmar
Reg. No. 63,815